

Bill no.:	HR 5058
Amendment no.:	3
Date offered:	7/10/02
Disposition:	Withdrawn

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 5058**  
**OFFERED BY MS. DEGETTE**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Truth and Accountability in Accounting Act of 2002”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—FINANCIAL ACCOUNTING STANDARDS BOARD  
RESOLUTION OF ACCOUNTING STANDARDS ISSUES**

Sec. 101. Findings.

Sec. 102. Review and evaluation.

Sec. 103. Response by Financial Accounting Standards Board.

Sec. 104. GAO evaluation of review mechanism.

**TITLE II—ACCOUNTING AND FINANCIAL REPORTING BY CERTAIN  
PUBLIC UTILITIES**

Sec. 201. Rulemaking on exemptions, waivers, etc.

Sec. 202. Report to Congress on implementation.

Sec. 203. Annual report.

**TITLE III—CERTIFICATION OF FINANCIAL STATEMENTS BY  
CORPORATE OFFICERS**

Sec. 301. Certification required.

**TITLE IV—ACCOUNTING PROFESSION GOVERNANCE**

Sec. 401. Purpose.

Sec. 402. Definitions.

Sec. 403. Establishment of the Independent National Board of Accountancy.

Sec. 404. Registration with the Board.

Sec. 405. Duties of the Board.

Sec. 406. Auditor independence.

Sec. 407. Investigations and disciplinary proceedings.

Sec. 408. Securities and Exchange Commission oversight of the Board.

Sec. 409. Foreign public accounting firms.

Sec. 410. Transition.

TITLE V—PRESERVATION OF AUTHORITY

Sec. 501. Securities and Exchange Commission authority not impaired.

1 **TITLE I—FINANCIAL ACCOUNT-**  
2 **ING STANDARDS BOARD RES-**  
3 **OLUTION OF ACCOUNTING**  
4 **STANDARDS ISSUES**

5 **SEC. 101. FINDINGS.**

6 The Congress finds the following:

7 (1) Transparent accounting plays an important  
8 role in maintaining the efficiency and integrity of  
9 our capital markets.

10 (2) Investors, creditors, and other consumers of  
11 financial reports rely heavily on credible, trans-  
12 parent, and comparable financial information.

13 (3) It is in the public interest and appropriate  
14 for the protection of investors that accounting stand-  
15 ards continue to be developed by an independent pri-  
16 vate sector organization that has an open, thorough,  
17 and credible process for the promulgation of gen-  
18 erally accepted accounting standards.

19 (4) To achieve this goal, it is necessary and ap-  
20 propriate to provide a mechanism for the review of  
21 the funding and standard-setting process of the Fi-  
22 nancial Accounting Standards Board, the inde-  
23 pendent private-sector entity whose mission is to es-



1       tablish and improve standards of financial account-  
2       ing and reporting for investors, creditors, and other  
3       consumers of financial reports.

4   **SEC. 102. REVIEW AND EVALUATION.**

5       (a) ANNUAL REVIEW.—The Securities and Exchange  
6       Commission shall conduct an annual review of the impact  
7       of unresolved accounting standards issues on the clarity,  
8       transparency, and quality of financial reporting by pub-  
9       licly traded companies. In conducting such review, the  
10      Commission shall consider—

11           (1) the current state of financial reporting by  
12           publicly traded companies on such unresolved ac-  
13           counting standards issues, including the diversity of  
14           current practices;

15           (2) the materiality of any changes to financial  
16           results from changing these practices;

17           (3) the international standards of accounting  
18           and financial reporting on such unresolved account-  
19           ing standards issues; and

20           (4) such other factors as the Commission deems  
21           necessary or appropriate.

22       (b) UNRESOLVED ACCOUNTING STANDARDS  
23       ISSUES.—For the purposes of this section, the term “un-  
24       resolved accounting standards issue” means the open  
25       agenda items of the Financial Accounting Standards

1 Board and the Financial Accounting Standards Board's  
2 Emerging Issues Task Force, and any other issues that  
3 the Securities and Exchange Commission has rec-  
4 ommended be added to that agenda.

5 (c) REPORT REQUIRED.—The Commission shall an-  
6 nually submit to the Committee on Energy and Commerce  
7 of the House of Representatives, the Committee on Bank-  
8 ing, Housing, and Urban Affairs of the Senate, and the  
9 Financial Accounting Standards Board a report on the re-  
10 sults of the review required by subsection (a). Such report  
11 shall include—

12 (1) an identification of the unresolved account-  
13 ing standards issues that are the most significant in  
14 terms of their effect on the clarity, transparency,  
15 and quality of financial reporting by publicly traded  
16 companies;

17 (2) the different alternatives available for the  
18 resolution of such accounting standards issues;

19 (3) a prioritization of such issues based on the  
20 perceived needs of investors, creditors, and other  
21 consumers of financial reports;

22 (4) the resources required for such resolution,  
23 and the resources likely to be available for such reso-  
24 lution;

1 (5) an evaluation on the progress made in the  
2 resolution of issues identified in prior annual re-  
3 ports; and

4 (6) such other information as the Commission  
5 deems necessary or appropriate.

6 **SEC. 103. RESPONSE BY FINANCIAL ACCOUNTING STAND-**  
7 **ARDS BOARD.**

8 (a) **RESPONSE REQUIRED.**—Within 60 days after re-  
9 ceiving a report by the Securities and Exchange Commis-  
10 sion under section 102(c), the Financial Accounting  
11 Standards Board shall submit to the Commission, the  
12 Committee on Energy and Commerce of the House of  
13 Representatives, and the Committee on Banking, Hous-  
14 ing, and Urban Affairs of the Senate a response to such  
15 report.

16 (b) **CONTENTS OF RESPONSE.**—The response re-  
17 quired by subsection (a) shall include an analysis of each  
18 of the conclusions contained in the report pursuant to  
19 paragraphs (1) through (6) of section 102(c). Such re-  
20 sponse shall also include—

21 (1) an analysis by the Board of the appro-  
22 priateness of each of the unresolved accounting  
23 standards issues identified pursuant to section  
24 102(c)(1);

1 (2) the plans of the Board to attempt to resolve  
2 the unresolved accounting standards issues identified  
3 in pursuant to section 102(c)(1);

4 (3) the alternatives that the Board intends to  
5 pursue for the resolution of such accounting stand-  
6 ards issues;

7 (4) the timetable by which the Board will seek  
8 to resolve such issues;

9 (5) the resources the Board will require for  
10 such resolution, and the resources likely to be avail-  
11 able for such resolution;

12 (6) reasons for any delays in accomplishing the  
13 timetables described in previous responses of the  
14 Board under this section; and

15 (7) such other information as the Financial Ac-  
16 counting Standards Board deems necessary or ap-  
17 propriate. --

18 **SEC. 104. GAO EVALUATION OF REVIEW MECHANISM.**

19 (a) **EVALUATION REQUIRED.**—The Comptroller Gen-  
20 eral shall conduct an ongoing evaluation of the process es-  
21 tablished by sections 102 and 103 of this title for the iden-  
22 tification and resolution of accounting standards issues.

23 (b) **REPORTS.**—

24 (1) **INTERIM REPORT.**—Within 2 years after  
25 the date of enactment of this Act, the Comptroller



1 General shall submit an interim report on the eval-  
2 uation required by subsection (a) to the Committee  
3 on Commerce of the House of Representatives and  
4 the Committee on Banking of the Senate.

5 (2) FINAL REPORT.—The Comptroller General  
6 shall submit a final report on such evaluations to  
7 such Committees within 5 years after such date of  
8 enactment.

9 (3) CONTENTS OF REPORTS.—Each of such re-  
10 ports shall contain—

11 (A) an analysis of whether the process is  
12 correctly identifying the current unresolved ac-  
13 counting standards issues;

14 (B) an analysis of whether the process is  
15 facilitating the efficient resolution of these un-  
16 resolved accounting standards issues;

17 (C) such recommendations for legislative  
18 changes in the requirements of this title as the  
19 Comptroller General considers appropriate; and

20 (D) such other information as the Comp-  
21 troller General deems necessary or appropriate.



1 **TITLE II—ACCOUNTING AND FI-**  
2 **NANCIAL REPORTING BY**  
3 **CERTAIN PUBLIC UTILITIES**

4 **SEC. 201. RULEMAKING ON EXEMPTIONS, WAIVERS, ETC.**

5 Part III of the Federal Power Act is amended by in-  
6 serting the following new section after section 319 and by  
7 redesignating sections 320 and 321 as sections 321 and  
8 322, respectively:

9 **“SEC. 320. CRITERIA FOR CERTAIN EXEMPTIONS, WAIVERS,**  
10 **ETC.**

11 “(a) **RULE REQUIRED FOR CERTAIN WAIVERS, EX-**  
12 **EMPTIONS, ETC.—**Not later than 6 months after the en-  
13 actment of this Act, the Commission shall promulgate a  
14 rule establishing specific criteria for providing an exemp-  
15 tion, waiver, or other reduced or abbreviated form of com-  
16 pliance with the requirements of sections 204, 301, 304,  
17 and 305 (including any prospective blanket order). Such  
18 criteria shall be sufficient to insure that any such action  
19 taken by the Commission will be consistent with the pur-  
20 poses of such requirements and will otherwise protect the  
21 public interest.

22 “(b) **MORATORIUM ON CERTAIN WAIVERS, EXEMP-**  
23 **TIONS, ETC.—**After the date of enactment of this section,  
24 the Commission may not issue, adopt, order, approve, or  
25 promulgate any exemption, waiver, or other reduced or ab-



1   breviated form of compliance with the requirements of sec-  
2   tion 204, 301, 304, or 305 (including any prospective  
3   blanket order) until after the rule promulgated under sub-  
4   section (a) has taken effect.

5       “(c) PREVIOUS FERC ACTION.—The Commission  
6   shall undertake a review, by rule or order, of each action  
7   described in subsection (a) that was taken before the date  
8   of enactment of this section. No such action may continue  
9   in force and effect after the date 18 months after the date  
10  of enactment of this section unless the Commission finds  
11  that such action complies with the rule under subsection  
12  (a).

13       “(d) EXEMPTION UNDER 204(f) NOT APPLICA-  
14  BLE.—For purposes of this section, in applying section  
15  204, the provisions of section 204(f) shall not apply.”.

16  **SEC. 202. REPORT TO CONGRESS ON IMPLEMENTATION.**

17       Within 12 months of the date of the enactment of  
18  this Act, the Federal Energy Regulatory Commission shall  
19  report to the Committee on Energy and Commerce of the  
20  United States House of Representatives and the Com-  
21  mittee on Energy and Natural Resources of the United  
22  States Senate on what specific measures the Commission  
23  has taken to comply with the amendments made by section  
24  201.

1 **SEC. 203. ANNUAL REPORT.**

2 The Federal Energy Regulatory Commission shall  
3 provide an annual report to the Committee on Energy and  
4 Commerce of the United States House of Representatives  
5 and the Committee on Energy and Natural Resources of  
6 the United States Senate summarizing the financial and  
7 operating condition of power marketers. Such report shall  
8 summarize the information provided to the Commission in  
9 periodic and special reports filed by power marketers, and  
10 include an analysis by the Commission of key trends or  
11 issues affecting the capital structure and financial condi-  
12 tion of such companies, including use of leverage, deriva-  
13 tives transactions, and other material information.

14 **TITLE III—CERTIFICATION OF**  
15 **FINANCIAL STATEMENTS BY**  
16 **CORPORATE OFFICERS**

17 **SEC. 301. CERTIFICATION REQUIRED.**

18 Section 13 of the Securities Exchange Act of 1934  
19 (15 U.S.C. 78m) is amended by adding at the end the  
20 following new subsection:

21 “(i) CERTIFICATION OF FINANCIAL STATEMENTS BY  
22 CORPORATE OFFICERS.—

23 “(1) STATEMENT TO SHAREHOLDERS.—Any  
24 periodic report filed under this section shall include,  
25 in accordance with such rules as the Commission  
26 may prescribe under this section, a statement ad-

1 dressed to the investors and potential investors in  
2 the issuer and signed by the chief executive officer  
3 and chief financial officer of the issuer that attests  
4 that—

5 “(A) the financial statements contained in  
6 such report (including the balance sheet, income  
7 statement, and cash flow statement) have been  
8 prepared by the management of the issuer;

9 “(B) the signing officers believe and affirm  
10 that such financial statements fairly present to  
11 investors, with clarity and completeness, the  
12 issuer’s financial position and performance for  
13 the reporting period in accordance with gen-  
14 erally accepted accounting principles and the  
15 disclosure requirements of this title and the  
16 rules and regulations thereunder; and

17 — “(C) the issuer’s internal controls and in-  
18 ternal audit procedures are consistent with best  
19 current accounting practices and fully comply  
20 with subsection (b)(2) of this section.

21 “(2) NO DELEGATION.—The responsibility to  
22 sign the statements required by paragraph (1) may  
23 not be delegated to any officer, employee, or agent  
24 of the issuer, except that if an issuer does not have  
25 a chief executive officer or chief financial officer (as

1 defined in rules prescribed by the Commission under  
2 this subsection), such rules may permit an specified  
3 alternative officer to sign such statements.”.

4 **TITLE IV—ACCOUNTING**  
5 **PROFESSION GOVERNANCE**

6 **SEC. 401. PURPOSE.**

7 The purposes of this title are—

8 (1) to create a new organization, subject to  
9 Commission oversight, with adequate authority and  
10 resources—

11 (A) to register public accounting firms that  
12 furnish accountant’s reports with respect to fi-  
13 nancial statements, reports, or other documents  
14 required to be filed with the Commission under  
15 the securities laws;

16 (B) to promulgate and enforce compliance  
17 with quality control and auditing standards de-  
18 signed to improve the quality of audits con-  
19 ducted by such firms;

20 (C) to administer a continuing program of  
21 inspection of the accounting and auditing prac-  
22 tices of public accounting firms registered with  
23 the Board; and

24 (D) to investigate and discipline appro-  
25 priately such firms, and persons associated with



1 such firms, who violate this title, the securities  
2 laws, the rules and regulations thereunder,  
3 rules adopted by the Board, or professional  
4 standards;

5 (2) to require public accounting firms fur-  
6 nishing any report with respect to financial state-  
7 ments, reports, or other documents required to be  
8 filed with the Securities and Exchange Commission  
9 under the securities laws to be registered with that  
10 Board; and

11 (3) to authorize the Board to establish quality  
12 control and auditing standards for audits of public  
13 companies, administer an audit and professional  
14 services inspection program, and undertake inves-  
15 tigations and disciplinary proceedings with respect to  
16 public accounting firms and persons associated with  
17 such firms.

18 **SEC. 402. DEFINITIONS.**

19 As used in this title, unless the context otherwise  
20 requires—

21 (1) **ACCOUNTANT'S REPORT.**—The term “ac-  
22 countant's report” means a document in which a  
23 public accounting firm identifies a financial state-  
24 ment, report, or other document and sets forth its  
25 opinion regarding such financial statement, report,

1 or other document, or an assertion that an opinion  
2 cannot be expressed.

3 (2) BOARD.—The term “Board” means the  
4 Independent National Board of Accountancy estab-  
5 lished under this title.

6 (3) COMMISSION.—The term “Commission”  
7 means the Securities and Exchange Commission.

8 (4) INTERMEDIARY.—The term “intermediary”  
9 means those parties who may advise 1 or more prin-  
10 cipals to a transaction and may include, but are not  
11 limited to, attorneys and investment, merchant, and  
12 commercial bankers.

13 (5) PERSON ASSOCIATED WITH A PUBLIC AC-  
14 COUNTING FIRM.—The term “person associated with  
15 a public accounting firm” means any individual pro-  
16 prietor, partner, shareholder, principal, professional  
17 employee, or any other ~~natural~~ person or entity  
18 who—

19 (A) shares in the profits of a public ac-  
20 counting firm; or

21 (B) engages in any conduct or practice in  
22 connection with the preparation of any account-  
23 ant’s report with respect to any financial state-  
24 ment, report, or other document required to be

1 filed with the Commission under the securities  
2 laws.

3 (6) PROFESSIONAL STANDARDS.—The term  
4 “professional standards” means generally accepted  
5 accounting principles, generally accepted auditing  
6 standards, generally accepted standards for attesta-  
7 tion engagements, generally accepted quality control  
8 policies and procedures, and any other standards re-  
9 lated to the preparation of financial statements or  
10 accountant’s reports, or to auditor ethics and inde-  
11 pendence, and promulgated by the Commission, the  
12 Board, or by a standard setting body generally rec-  
13 ognized or endorsed by the Commission or the  
14 Board.

15 (7) PUBLIC ACCOUNTING FIRM.—The term  
16 “public accounting firm” means—

17 ——— (A) a sole proprietorship, incorporated as-  
18 sociation, partnership, corporation, limited li-  
19 ability company, limited liability partnership, or  
20 other legal entity that is engaged in the practice  
21 of public accounting or furnishing reports with  
22 respect to financial statements, reports, or  
23 other documents filed with the Commission;

24 (B) in the event an entity described in sub-  
25 paragraph (A) leases or otherwise acquires on a

1 temporary or continuous basis the services of  
2 personnel or other assets employed full- or part-  
3 time by another entity (the “lessor”), to the ex-  
4 tent so designated by the Board, the lessor and  
5 the lessor’s board of directors, management,  
6 employees, and shareholders of 10 percent or  
7 more of the lessor’s equity securities;

8 (C) in the event an entity described in sub-  
9 paragraph (A) or an affiliate of such entity has  
10 public shareholders, to the extent so designated  
11 by the Board, those public shareholders and  
12 their affiliates; and

13 (D) such other affiliates of an entity de-  
14 scribed in subparagraph (A) as designated by  
15 the Board.

16 (8) SECURITIES LAW.—The term “securities  
17 laws” has the same meaning as prescribed in section  
18 3(a)(47) of the Securities Exchange Act of 1934.

19 (9) STATE.—The term “State” means any  
20 State of the United States, the District of Columbia,  
21 Puerto Rico, the Virgin Islands, or any other posses-  
22 sion of the United States.



1 **SEC. 403. ESTABLISHMENT OF THE INDEPENDENT NA-**  
2 **TIONAL BOARD OF ACCOUNTANCY.**

3 (a) ESTABLISHMENT OF THE BOARD.—No later than  
4 180 days after the date of the enactment of this Act, the  
5 Commission shall establish an Independent National  
6 Board of Accountancy to perform the duties set forth in  
7 this title, which shall be located in the District of Colum-  
8 bia.

9 (b) MEMBERSHIP OF THE BOARD.—

10 (1) COMPOSITION.—The Board shall be com-  
11 posed of 5 members. Members shall be prominent in-  
12 dividuals of integrity and reputation who have a  
13 commitment to the interests of investors and the  
14 public. No more than 2 of the 5 members may be  
15 present or former certified public accountants who  
16 are eligible if they—

17 (A) are not currently in public practice;

18 (B) have not for a period of at least 3  
19 years been associated with a public accounting  
20 firm; and

21 (C) do not currently share in the profits of  
22 or receive payments from such a firm.

23 (2) APPOINTMENT.—The Chair and members  
24 of the Board shall be appointed by the Commission  
25 from a list of recommended individuals provided  
26 under paragraph (3).

1           (3) RECOMMENDATIONS.—At the time of any  
2           vacancy, the Comptroller General shall submit to the  
3           Commission a list of at least 3 individuals who are  
4           eligible for service on the Board or as Chair and who  
5           are recommended by the Comptroller General. The  
6           Commission may ask the Comptroller General to  
7           recommend additional individuals.

8           (4) FULL-TIME SERVICE.—All members of the  
9           Board shall serve on a full-time basis, severing all  
10          ties with their former firms or employers, except as  
11          authorized by the Commission.

12          (5) TERMS OF OFFICE.—Each member of the  
13          Board shall hold office for a term of 5 years and  
14          until a successor is appointed, except that—

15                (A) any member appointed to fill a vacancy  
16                occurring prior to the expiration of the term of  
17                a predecessor shall be eligible to serve for the  
18                remainder of that term; and

19                (B) the terms of office of the initial Board  
20                members shall expire, as designated by the  
21                Commission at the time of appointment, 1 at  
22                the end of 1 year, 1 at the end of 2 years, 1  
23                at the end of 3 years, 1 at the end of 4 years,  
24                and 1 at the end of 5 years after the establish-  
25                ment of the Board.



1 (6) MULTIPLE TERMS.—A member may be re-  
2 appointed to the Board, but in no instance may a  
3 member serve more than 2 terms.

4 (7) REMOVAL.—A member of the Board may be  
5 removed from office for cause prior to the expiration  
6 of his or her term by either a majority vote of the  
7 other members of the Board, subject to the approval  
8 of the Commission, or by the Commission pursuant  
9 to section 408(f)(2) of this title.

10 (c) OPERATION OF THE BOARD.—

11 (1) RULES.—The Board shall propose and  
12 adopt rules—

13 (A) to provide for the operation and ad-  
14 ministration of the Board, and the compensa-  
15 tion of the members of the Board;

16 (B) to provide for the appointment and  
17 ~~compensation~~ compensation of such accountants, attorneys,  
18 employees, and consultants as may be necessary  
19 or appropriate to carry out the Board's func-  
20 tions under this title;

21 (C) to provide for the registration of public  
22 accounting firms with the Board pursuant to  
23 section 404 of this title; and

24 (D) to enter into contracts, incur expenses,  
25 and take such other actions as may be nec-

1           essary or appropriate for it to perform its du-  
2           ties under this title.

3           (2) COMPENSATION.—Members of the Board  
4           shall be compensated at a level comparable to simi-  
5           lar professional positions in the private sector. Sala-  
6           ries of members of the Board shall be subject to an-  
7           nual review and approval by the Commission.

8           (d) REGISTRATION AND ANNUAL FEES.—The Board  
9           shall assess and collect a registration fee and annual dues  
10          from each public accounting firm registered with the  
11          Board. The fees shall be subject to the annual review and  
12          approval of the Commission. Such fees and dues shall be  
13          assessed at a level sufficient to recover the costs and ex-  
14          penses of the Board and to permit the Board to operate  
15          on a self-funding basis. The amount of fees and dues for  
16          each public accounting firm shall be based upon—

17               (1) the annual revenues of such ~~firm from ac-~~  
18               counting, auditing, and other professional services  
19               provided to Commission registrants;

20               (2) the number of persons associated with the  
21               firm;

22               (3) the number of entities for which the firm  
23               furnishes accountant's reports with respect to finan-  
24               cial statements, reports, or other documents required

1 to be filed with the Commission under the securities  
2 laws; and

3 (4) such other criteria as the Board, with the  
4 approval of the Commission, may establish.

5 (e) SPECIAL FEES.—The Board may prescribe fees,  
6 and collect its costs incurred, in connection with inspec-  
7 tions and disciplinary actions conducted in accordance  
8 with this title provided that such fees and costs shall fairly  
9 reflect the cost to the Board of providing such services.

10 (f) ANNUAL REPORT.—The Board shall submit to  
11 the Commission for its review and approval, an annual re-  
12 port and budget. The annual report shall include a de-  
13 scription of the Board's activities, its audited financial  
14 statements and such other matters as the Board or the  
15 Commission considers appropriate. The Board shall also  
16 submit its annual report to Congress.

17 **SEC. 404. REGISTRATION WITH THE BOARD.**

18 (a) MANDATORY REGISTRATION WITH THE  
19 BOARD.—Beginning 1 year after the date of the establish-  
20 ment of the Board, it shall be unlawful for any public ac-  
21 counting firm to furnish an accountant's report with re-  
22 spect to any financial statement, report or other document  
23 required to be filed with the Commission under the securi-  
24 ties laws unless such firm—

25 (1) is registered with the Board; and

1           (2) has paid all applicable registration and an-  
2           nual fees pursuant to section 403(d) of this title.

3           (b) APPLICATION FOR REGISTRATION.—A public ac-  
4           counting firm may be registered under this title by filing  
5           with the Board an application for registration in such  
6           form and containing such information as the Board, by  
7           rule, may prescribe. Each application shall include the fol-  
8           lowing:

9           (1) CLIENTS AND CLIENT FEES.—The names of  
10          all clients of the public accounting firm for which  
11          the firm furnishes accountant's reports with respect  
12          to financial statements, reports, or other documents  
13          required to be filed with the Commission and, for  
14          each such client, the annual fees received from such  
15          client by such firm in connection with—

16                (A) performance of the annual audit and  
17                quarterly interim ~~reviews~~ of the client's finan-  
18                cial statements filed with the Commission under  
19                the securities laws;

20                (B) other accounting and auditing services;

21                (C) tax services;

22                (D) information technology consulting  
23                services; and

24                (E) all other consulting or advisory serv-  
25                ices in such detail as the Board shall determine.

1           (2) FIRM FINANCIAL INFORMATION.—Financial  
2 information of the public accounting firm for its  
3 most recent fiscal year, including its annual reve-  
4 nues in total and the aggregate from each of ac-  
5 counting and auditing, tax and other professional  
6 services provided to Commission registrants, and the  
7 firm's total assets, total liabilities and net equity.

8           (3) INSURANCE INFORMATION.—The names of  
9 the liability insurance carrier, if any, of the public  
10 accounting firm and of persons associated with the  
11 public accounting firm.

12           (4) QUALITY CONTROL.—A copy of the public  
13 accounting firm's policies and procedures with re-  
14 spect to quality control of its accounting and audit-  
15 ing practice.

16           (5) ASSOCIATED PERSONS.—A list of the per-  
17 ~~sons~~ associated with the public accounting firm, the  
18 license or certification number of such person, and  
19 a brief statement of each such person's education  
20 and experience.

21           (6) PENDING PROCEEDINGS.—Information re-  
22 lating to criminal, civil, or administrative actions or  
23 disciplinary proceedings pending against the firm or  
24 any person associated with the firm in connection  
25 with any accountant report furnished by such firm.

1           (7) SUCCESSOR AUDIT APPOINTMENTS.—A list  
2       of issuers for which the public accounting firm has  
3       been appointed as a successor auditor in the most  
4       recently completed fiscal year and where unresolved  
5       disagreements existed between the successor and  
6       predecessor auditor on the application of generally  
7       accepted accounting principles. The list shall also de-  
8       scribe in adequate detail the nature of such disagree-  
9       ments.

10          (8) ADDITIONAL INFORMATION.—Such other  
11       information as the Board or the Commission con-  
12       siders necessary or appropriate.

13       (c) PERIODIC REPORTS.—Annually, or within 15  
14       business days with respect to matters reported pursuant  
15       to paragraphs (6) and (7) of subsection (b) of this section,  
16       or more frequently as the Board may prescribe, each  
17       public accounting firm registered with the Board shall  
18       submit reports to the Board updating the information con-  
19       tained in its application for registration and containing  
20       such additional information as the Board may prescribe.  
21       Such annual or periodic reports, or parts thereof as des-  
22       ignated by the Board or the Commission, shall be available  
23       for public inspection, including inspection by means of the  
24       Internet.



1 (d) EXEMPTIONS AND DELEGATION.—The Commis-  
2 sion, by rule, upon its own motion or upon application,  
3 may conditionally or unconditionally exempt any public ac-  
4 counting firm or any accountant's report, or any class of  
5 public accounting firms or any class of accountant's re-  
6 ports, from any provisions of this title or the rules or regu-  
7 lations thereunder, if the Commission finds that such ex-  
8 emption is consistent with the public interest, the protec-  
9 tion of investors, and the purposes of this title. The Com-  
10 mission may delegate to the Board its authority, including  
11 its remedial and disciplinary authority with respect to pub-  
12 lic accounting firms, persons associated with public ac-  
13 counting firms, and an accounting person associated with  
14 an issuer.

15 **SEC. 405. DUTIES OF THE BOARD.**

16 (a) QUALITY CONTROL STANDARDS.—The Board  
17 shall seek to promote high professional standards among  
18 public accounting firms registered with the Board, to im-  
19 prove the quality of audit services provided by such firms,  
20 and, in general, to protect investors and promote the pub-  
21 lic interest. In furtherance of these goals, the Board shall  
22 take the following actions:

23 (1) PROMULGATION AND ENFORCEMENT.—

24 (A) AUTHORITY.—Promulgate and enforce  
25 compliance with such standards of quality con-

1 trol as the Board, by rule, shall prescribe as  
2 necessary or appropriate in the public interest  
3 or for the protection of investors in connection  
4 with the preparation and issuance by public ac-  
5 counting firms registered with the Board of ac-  
6 countant's reports with respect to financial  
7 statements, reports, or other documents re-  
8 quired to be filed with the Commission under  
9 the securities laws. Such standards of quality  
10 control shall include, among such other require-  
11 ments that the Board may prescribe, policies  
12 and procedures for the following:

13 (i) The monitoring by the public ac-  
14 counting firm of its professional ethics in-  
15 cluding its independence from its audit cli-  
16 ents.

17 (ii) The assignment of personnel to  
18 engagements.

19 (iii) Consultation within the firm or  
20 with other accountants on accounting and  
21 auditing questions.

22 (iv) The supervision of audit work.

23 (v) The hiring, professional develop-  
24 ment, and advancement of personnel.

1 (vi) The acceptance and continuation  
2 of clients.

3 (vii) The internal inspection of the  
4 firm's own compliance with such policies  
5 and procedures.

6 (B) MANDATORY STANDARDS.—Such  
7 standards shall include the requirements that  
8 each public accounting firm registered with the  
9 Board—

10 (i) prepare and maintain for a period  
11 of no less than 7 years, audit work papers  
12 and other information related to any ac-  
13 countant's report, in sufficient detail to  
14 support the conclusions reached in such ac-  
15 countant's report;

16 (ii) provide a “concurring” or “sec-  
17 ——— ond” partner review of such audit work pa-  
18 pers and other related information by a  
19 qualified person (as prescribed by the  
20 Board) associated with the public account-  
21 ing firm, other than the person in charge  
22 of the audit, or by an independent reviewer  
23 (as prescribed by the Board); and

24 (iii) secure the concurring approval of  
25 such qualified person or independent re-



1 viewer as a necessary prerequisite to the  
2 issuance of the accountant's report.

3 (2) INSPECTIONS.—

4 (A) IN GENERAL.—Conduct a continuing  
5 program of inspections of each public account-  
6 ing firm registered with the Board to assess  
7 compliance by such firm, and by persons associ-  
8 ated with such firm, with applicable provisions  
9 of this title, the securities laws, the rules and  
10 regulations thereunder, the rules adopted by the  
11 Board, and professional standards.

12 (B) ONGOING INSPECTIONS.—Inspections  
13 of each firm that audits more than 100 issuers  
14 shall be conducted on an ongoing annual basis,  
15 and all other public accounting firms no less  
16 than at least once every 3 years, and shall,  
17 among other matters that the Board may pre-  
18 scribe, identify and report any act or practice,  
19 or omission to act, by such firm, or by any per-  
20 son associated with such firm, that is found to  
21 be in violation of any such provision.

22 (C) REQUIRED EVALUATIONS.—In con-  
23 ducting such inspections, the Board shall,  
24 among other things, inspect selected audit and  
25 review engagements performed at various of-



1 fices and by various persons associated with the  
2 public accounting firm under inspection, and, in  
3 connection with the inspection, evaluate—

4 (i) whether the firm's quality control  
5 system is appropriate;

6 (ii) whether the firm's policies and  
7 procedures are adequately documented and  
8 communicated to its personnel;

9 (iii) whether there is compliance with  
10 such policies and procedures sufficient to  
11 provide reasonable assurance of conformity  
12 with professional standards; and

13 (iv) whether professional accounting,  
14 auditing, and independence and ethics  
15 standards were complied with.

16 (D) REPORT OF FINDINGS.—In connection  
17 with each review, the Board, shall prepare a re-  
18 port of its findings, and such report, accom-  
19 panied by any letter of comments by the Board  
20 or reviewer and any letter of response from the  
21 firm under review, shall be made available to  
22 the public.

23 (3) DISCIPLINE.—Provide that public account-  
24 ing firms registered with the Board, and persons as-  
25 sociated with such firms, shall be appropriately dis-

1 ciplined in accordance with the provisions of section  
2 407 of this title for violation of any provision of this  
3 title, the securities laws, the rules or regulations  
4 thereunder, the rules adopted by the Board, or pro-  
5 fessional standards.

6 (4) RECORDS MAINTENANCE.—Prescribe  
7 records to be made and kept by public accounting  
8 firms and the periods for which, and physical loca-  
9 tion where, such records shall be kept to facilitate  
10 the reviews required under this title.

11 (b) AUDITING STANDARDS.—The Board shall pro-  
12 mulgate and enforce compliance with such auditing stand-  
13 ards as the Board, by rule, shall prescribe as necessary  
14 or appropriate in the public interest or for the protection  
15 of investors in connection with the preparation and  
16 issuance by public accounting firms registered with the  
17 Board of accountants' reports with respect to financial  
18 statements, reports, or other documents required to be  
19 filed with the Commission under the securities laws.

20 (c) OTHER DUTIES.—The Board shall perform such  
21 other duties or functions as the Commission determines  
22 are necessary or appropriate in the public interest for the  
23 protection of investors and to carry out the purposes of  
24 this title.



1 **SEC. 406. AUDITOR INDEPENDENCE.**

2 (a) RULES; CRITERIA.—The Commission shall have  
3 the authority and responsibility for promulgating and in-  
4 terpreting auditor independence rules. For purposes of the  
5 securities laws, a public accounting firm shall not be  
6 deemed independent of an audit client if any of the fol-  
7 lowing conditions or circumstances applies:—

8 (1) PRIOR EMPLOYMENT OF OFFICERS.—An  
9 issuer's chief executive officer, chief financial officer,  
10 controller or principal accounting officer, or any  
11 equivalent position was a person associated with the  
12 public accounting firm during any period in the most  
13 recent 2 years, on which the public accounting firm  
14 sets forth its independent accountant's report on the  
15 financial statements required to be filed with the  
16 Commission under the securities laws.

17 (2) NON-AUDIT SERVICE.—

18 (A) LIMITATION.—The auditor has pro-  
19 vided services in any year other than those re-  
20 quired by professional standards in connection  
21 with rendering an independent accountant's  
22 audit or review report on the financial state-  
23 ments of the issuer, and the audit committee  
24 has not preapproved those services that were in-  
25 dividually or in the aggregate in excess of 20  
26 percent of the fees for professional services for

1 the audit and review of the annual and interim  
2 financial statements, and in doing so, made a  
3 determination they were in the best interest of  
4 investors and disclosed that determination to  
5 the stockholders of the issuer.

6 (B) IMPLEMENTATION.—The Board may  
7 issue rules for purposes of implementing this  
8 paragraph, and exempting services provided by  
9 the auditor from its provision, if the Board  
10 makes a finding that the services provided by  
11 the auditor are in the best interests of investors  
12 and will improve the quality of financial report-  
13 ing and independent audits.

14 (3) LACK OF AUDITOR ROTATION.—The firm  
15 has served as the auditor of an issuer for more than  
16 7 consecutive years during which the auditor issued  
17 its independent accountant's report on the financial  
18 statements of the issuer. However, an accounting  
19 firm shall be considered to be independent if after  
20 serving as the auditor of the issuer for 7 consecutive  
21 years, it has not issued its accountant's report on  
22 the financial statements of the issuer for at least 2  
23 consecutive years, subsequent to the 7-year term as  
24 auditor.

25 (4) TRANSACTION DESIGN AND EVALUATION.—



1 (A) ADVICE OR CONSULTATION.—With re-  
2 spect to any transaction that is accounted for  
3 in the issuer's audited or reviewed financial  
4 statements, and which is included in the trans-  
5 actions on which the firm issues its audit opin-  
6 ion or review report on the issuer's financial  
7 statements, the firm—

8 (i) advised or consulted the issuer or  
9 an intermediary in the design or struc-  
10 turing of such transaction; or

11 (ii) provided the issuer or inter-  
12 mediary a report on the application of gen-  
13 erally accepted accounting principles or  
14 Federal tax laws or regulations to the  
15 transaction.

16 (B) EXCEPTION.—The firm's independence  
17 ~~shall not be deemed to be impaired if the public~~  
18 accounting firm provides, in the performance of  
19 an audit engagement, a report to an audit cli-  
20 ent on the application of generally accepted ac-  
21 counting principles or Federal tax laws or regu-  
22 lations to a specific transaction on which the  
23 auditor has not otherwise advised or consulted  
24 on the design or structuring.

1 (5) NOT SUPERVISED BY AUDIT COMMITTEE.—

2 The firm is not appointed by, and does not report  
3 directly to, the audit committee of the board of di-  
4 rectors, or, in the absence of an audit committee, the  
5 board committee performing equivalent functions or  
6 the entire board of directors.

7 (b) BOARD ACTIONS.—The Board shall seek to pro-  
8 mote the independence of auditors by—

9 (1) inspecting the compliance with professional  
10 standards by public accounting firms registered with  
11 the Board, pursuant to paragraphs (1), (2), and (3)  
12 of section 405(a); and

13 (2) appropriately disciplining the firm or per-  
14 sons associated with such firm in accordance with  
15 the provisions of section 407 of this title for viola-  
16 tions of provisions of this title, the securities laws,  
17 the rules or regulations thereunder, ~~the rules adopt-~~  
18 ed by the Board or professional standards.

19 **SEC. 407. INVESTIGATIONS AND DISCIPLINARY PRO-**  
20 **CEEDINGS.**

21 (a) INVESTIGATIONS AND DISCIPLINARY PRO-  
22 CEEDINGS.—The Board shall establish fair procedures for  
23 investigating and disciplining public accounting firms reg-  
24 istered with the Board, and persons associated with such  
25 firms, for violations of this title, the securities laws, the

1 rules or regulations thereunder, the rules adopted by the  
2 Board, or professional standards.

3 (b) INVESTIGATION PROCEDURES.—

4 (1) GENERAL AUTHORITY.—The Board may  
5 conduct an investigation of any act or practice, or  
6 omission to act, by a public accounting firm reg-  
7 istered with the Board, or by any person associated  
8 with such firm, that may violate any applicable pro-  
9 vision of this title, the securities laws, the rules or  
10 regulations thereunder, the rules adopted by the  
11 Board, or professional standards, whether such act,  
12 practice, or omission is identified in a review con-  
13 ducted in accordance with the provisions of section  
14 405 of this title, is the subject of a criminal, civil,  
15 or administrative action or disciplinary proceeding,  
16 or otherwise is brought to the attention of the  
17 Board. At the discretion of the Board, ~~such an in-~~  
18 vestigation, in light of the circumstances, may relate  
19 to the entire public accounting firm, to 1 or more  
20 persons associated with the firm, or to 1 or more of-  
21 fices, engagements, or transactions of such firm.

22 (2) INCIDENTAL AUTHORITY.—For purposes of  
23 an investigation under this section, the Board may,  
24 in addition to such other actions as the Board deter-  
25 mines to be necessary or appropriate—

1 (A) require the testimony of any person as-  
2 sociated with a public accounting firm reg-  
3 istered with the Board, with respect to any  
4 matter which the Board considers relevant or  
5 material to the investigation;

6 (B) require the production of audit work  
7 papers and of any other document or informa-  
8 tion in the possession of a public accounting  
9 firm registered with the Board or any person  
10 associated with such firm, wherever domiciled,  
11 that the Board considers relevant or material to  
12 the investigation, and may examine the books  
13 and records of such firm to verify the accuracy  
14 of any documents or information supplied; and

15 (C) require the testimony of, and produc-  
16 tion of any document in the possession of, any  
17 person, including any client of a public account-  
18 ing firm registered with the Board, that the  
19 Board considers relevant or material to the in-  
20 vestigation.

21 (3) SANCTIONS.—Failure of any person to com-  
22 ply with the requirements of this section shall be  
23 subject to the same sanctions as are applicable for  
24 any failure to produce information or testimony to  
25 the Commission in the course of a formal investiga-

1       tion. In addition, the refusal of any person associ-  
2       ated with a public accounting firm registered with  
3       the Board to testify, or the refusal of any such per-  
4       son, or of any public accounting firm, to produce  
5       documents or otherwise cooperate with the Board in  
6       connection with an investigation under this section,  
7       shall be cause for the suspension or revocation of  
8       registration of such public accounting firm, sus-  
9       pending or barring such person from being associ-  
10      ated with an issuer or a public accounting firm reg-  
11      istered with the Board, or such other appropriate  
12      sanction as the Board shall determine.

13           (4) REFERRAL TO COMMISSION.—The Board  
14      may refer any other investigation to the Commission  
15      as it deems appropriate. The Commission shall  
16      evaluate any such matter referred to it by the Board  
17      ~~and~~ shall take action with respect to the matter as  
18      it deems necessary or appropriate.

19           (5) CONFIDENTIALITY OF INVESTIGATIONS.—

20           (A) INFORMATION CONFIDENTIAL.—Ex-  
21      cept as provided in subparagraph (B), all re-  
22      ports, memorandums, and other information  
23      prepared or received by, and deliberations of,  
24      the Board and its employees and agents in con-  
25      nection with an investigation under this section

1 shall be confidential and privileged unless and  
2 until presented in connection with a public pro-  
3 ceeding or the public release by the Board of  
4 its report of sanctions pursuant to subsection  
5 (d).

6 (B) AVAILABILITY TO OTHER AUTHORI-  
7 TIES.—All information referred to in subpara-  
8 graph (A) of this paragraph—

9 (i) shall be available to—

10 (I) the Commission and any  
11 other Federal department or agency;

12 (II) the appropriate State licens-  
13 ing board or boards; and

14 (III) Federal and State authori-  
15 ties in connection with any criminal  
16 investigation or proceeding; and

17 (ii) shall be admissible—

18 (I) in any civil action brought by  
19 the Commission or any other Federal  
20 department or agency, or by any such  
21 State licensing board; and

22 (II) in any criminal action.

23 Nothing in this subsection shall authorize the  
24 Board to withhold information from Congress.



1 (C) RELATION TO FOIA.—For purposes of  
2 section 552 of title 5, United States Code, this  
3 paragraph shall be considered a statute de-  
4 scribed in section 552(b)(3)(B) of such title.

5 (6) INVESTIGATIVE IMMUNITY.—Any employee  
6 of the Board engaged in carrying out an investiga-  
7 tion under this section shall be immune from any  
8 civil liability arising out of such investigation in the  
9 same manner and to the same extent as an employee  
10 of the Federal Government in similar circumstances.

11 (c) DISCIPLINARY PROCEDURES.—

12 (1) NOTICE AND HEARING.—In any proceeding  
13 by the Board to determine whether a public account-  
14 ing firm, or a person associated with such firm,  
15 should be disciplined, the Board shall bring specific  
16 charges, notify such firm or person of, and give such  
17 persons or firm an opportunity to defend against,  
18 such charges, and shall keep a record of the pro-  
19 ceedings. All hearings under this subsection shall be  
20 public unless otherwise ordered by the Board on its  
21 own motion or after considering the motion of a  
22 party.

23 (2) AVAILABLE REMEDIES.—If the Board finds  
24 that a public accounting firm, or persons associated  
25 with a public accounting firm, has engaged in any

1 act or practice, or omitted to act, in violation of this  
2 title, the securities laws, the rules or regulations  
3 thereunder, the rules adopted by the Board, or pro-  
4 fessional standards, then the Board may impose  
5 such disciplinary or remedial sanctions as it deems  
6 appropriate, including—

7 (A) temporary or permanent revocation or  
8 suspension of registration with the Board;

9 (B) temporary or permanent limitation of  
10 activities, functions, or operations;

11 (C) civil money penalties;

12 (D) censure and, in the case of a person  
13 associated with a public accounting firm, tem-  
14 porary or permanent suspension or bar from  
15 being associated with any public accounting  
16 firm registered with the Board; or

17 (E) any other appropriate sanction.

18 (3) AUTHORIZED CIVIL PENALTIES.—

19 (A) DETERMINATION BY BOARD.—Subject  
20 to subparagraphs (B) and (C), the Board may  
21 impose, and shall determine the amount of, civil  
22 money penalties in light of the facts and cir-  
23 cumstances.

24 (B) IN GENERAL.—For each violation, the  
25 amount of the penalty shall not exceed the



1 greater of \$100,000 for a natural person or  
2 \$2,000,000 for any other persons.

3 (C) INCREASED PENALTIES.—Notwith-  
4 standing subparagraph (B), the amount of pen-  
5 alty for each such violation shall not exceed the  
6 greater of \$750,000 for a natural person or  
7 \$15,000,000 for any other persons, if the viola-  
8 tion involved fraud, deceit, manipulation, or de-  
9 liberate or reckless disregard of the regulatory  
10 standard.

11 (4) STATEMENT OF SANCTION.—A determina-  
12 tion by the Board to impose a disciplinary or reme-  
13 dial sanction shall be supported by a statement set-  
14 ting forth—

15 (A) any act or practice in which such firm  
16 or person associated with such firm has been  
17 found to have engaged, or which such firm or  
18 person has been found to have omitted;

19 (B) the specific provision of this title, the  
20 securities laws, the rules or regulations there-  
21 under, the rules adopted by the Board, or pro-  
22 fessional standards which any such act or prac-  
23 tice, or omission to act, is deemed to violate;  
24 and

1 (C) the sanction imposed and the reason  
2 for that sanction.

3 (5) CONSEQUENCES OF SANCTION.—

4 (A) ASSOCIATION WITH FIRMS.—It shall  
5 be unlawful for any person suspended or barred  
6 from being associated with a public accounting  
7 firm registered with the Board willfully to be-  
8 come or remain associated with such a firm  
9 without the consent of the Board or the Com-  
10 mission. It shall be unlawful for any public ac-  
11 counting firm registered with the Board to per-  
12 mit such a person to become or remain associ-  
13 ated with such a firm without the consent of  
14 the Board or the Commission if such firm  
15 knew, or, in the exercise of reasonable care  
16 should have known, of such suspension or bar.

17 (6) ASSOCIATION WITH ISSUERS.—It shall be  
18 unlawful for any person suspended or barred from  
19 being associated with an issuer willfully to become,  
20 or remain associated with such an issuer without the  
21 consent of the Board or the Commission. It shall be  
22 unlawful for any issuer to permit such a person to  
23 become, or remain a person associated with such  
24 issuer without the consent of the Board or the Com-  
25 mission if such issuer knew, or, in the exercise of



1 reasonable care should have known, of such suspen-  
2 sion or bar.

3 (d) REPORTING OF SANCTIONS.—

4 (1) REPORTING REQUIRED.—Whenever the  
5 Board imposes a disciplinary sanction against a pub-  
6 lic accounting firm or a person associated with a  
7 public accounting firm or any other person, the  
8 Board shall report the sanction to the Commission,  
9 to the appropriate State or foreign licensing board  
10 or boards with which such firm or person is licensed  
11 or certified to practice public accounting, and to the  
12 public.

13 (2) INFORMATION REQUIRED.—The information  
14 required to be reported shall include—

15 (A) the name of the public accounting  
16 firm, or accountant associated with an issuer,  
17 against whom the sanction is imposed;

18 (B) a description of the acts or practices,  
19 or omissions to act, upon which the sanction is  
20 based;

21 (C) the nature of the sanction; and

22 (D) such other information respecting the  
23 circumstances of the disciplinary action as the  
24 Board deems appropriate.

1 (3) AVAILABILITY TO PUBLIC.—In order to  
2 make the information required under paragraph (2)  
3 available to the public, the Board shall—

4 (A) establish and maintain a toll-free tele-  
5 phone listing and any other readily accessible  
6 electronic process to receive inquiries regarding  
7 such information; and

8 (B) respond promptly to such inquiries.

9 **SEC. 408. SECURITIES AND EXCHANGE COMMISSION OVER-**  
10 **SIGHT OF THE BOARD.**

11 (a) PROPOSED RULE CHANGES.—

12 (1) FILING, PUBLICATION, AND COMMENT.—

13 The Board shall file with the Commission, in accord-  
14 ance with such rules as the Commission may pre-  
15 scribe, copies of any proposed rule or any proposed  
16 change in, addition to, or deletion from the rules of  
17 the Board (hereinafter collectively referred to as  
18 “proposed rule change”) accompanied by a concise  
19 general statement of the basis and purpose of such  
20 proposed rule change. Upon the filing of any pro-  
21 posed rule change, the Commission shall publish a  
22 public notice of the proposed rule change together  
23 with the terms and substance of the proposed rule  
24 change or a description of the subjects and issues in-  
25 volved in the Federal Register. The Commission

1 shall give interested persons an opportunity to sub-  
2 mit written data, views, and arguments concerning  
3 such proposed rule change. No proposed rule  
4 changes shall take effect unless approved by the  
5 Commission or otherwise permitted in accordance  
6 with the provisions of this section.

7 (2) PROCEDURE.—

8 (A) APPROVAL OR INSTITUTION OF PRO-  
9 CEEDINGS.—Within 35 days of the date of pub-  
10 lication of notice of the filing of a proposed rule  
11 change in accordance with subsection (a)(1) of  
12 this section, or within such longer period as the  
13 Commission may designate up to 90 days of  
14 such date if it finds such longer period to be  
15 appropriate and publishes its reasons for so  
16 finding or as to which the Board consents, the  
17 Commission shall—

18 (i) by order approve such proposed  
19 rule change; or

20 (ii) institute proceedings to determine  
21 whether the proposed rule change should  
22 be disapproved.

23 (B) NOTICE OF GROUNDS; APPROVAL OR  
24 DISAPPROVAL.—Such proceedings shall include  
25 notice of the grounds for disapproval under con-

1           sideration and opportunity for hearing and be  
2           concluded within 180 days of the date of publi-  
3           cation of notice of the filing of the proposed  
4           rule change. At the conclusion of such pro-  
5           ceedings the Commission, by order published in  
6           the Federal Register, shall approve or dis-  
7           approve such proposed rule change. The Com-  
8           mission may extend the time for conclusion of  
9           such proceedings for up to 60 days if it finds  
10          good cause for such extension and publishes its  
11          reasons for so finding or for such longer period  
12          as to which the Board consents.

13               (C) GROUNDS FOR DECISION.—The Com-  
14          mission shall approve a proposed rule change if  
15          it finds that such proposed rule change is con-  
16          sistent with the requirements of this title, the  
17          securities laws, and the rules and regulations  
18          thereunder. The Commission shall disapprove a  
19          proposed rule change if it does not make such  
20          a finding. The Commission shall not approve  
21          any proposed rule change prior to the 30th day  
22          after the date of publication of notice of the fil-  
23          ing thereof, unless the Commission finds good  
24          cause for so doing and publishes its reasons for  
25          so doing.



1 (3) RULES EFFECTIVE UPON FILING.—

2 (A) RULES PERMITTED.—Notwithstanding  
3 the provisions of paragraph (2) of this sub-  
4 section, a proposed rule change may take effect  
5 upon filing with the Commission if designated  
6 by the Board as—

7 (i) constituting a stated policy, prac-  
8 — tice, or interpretation with respect to the  
9 meaning, administration, or enforcement of  
10 an existing rule of the Board;

11 (ii) establishing or changing a fee, or  
12 other charge imposed by the Board; or

13 (iii) concerned solely with the admin-  
14 istration of the Board or other matters  
15 which the Commission, by rule, consistent  
16 with the public interest and the purposes  
17 of this section, may specify as outside the  
18 provisions of such paragraph (2).

19 (B) AUTHORITY.—Notwithstanding any  
20 other provision of this section, a proposed rule  
21 change may be put into effect summarily if it  
22 appears to the Commission, after consultation  
23 with the Board, or the Board after consultation  
24 with the Commission, that such action is nec-  
25 essary for the protection of investors. Any pro-

1           posed rule change so put into effect shall be  
2           filed promptly thereafter in accordance with the  
3           provisions of paragraph (1) of this subsection.

4           (C) LIMITATION ON EFFECT.—Any pro-  
5           posed rule change that has taken effect pursu-  
6           ant to subparagraph (A) or (B) of this para-  
7           graph may be enforced by the Board to the ex-  
8           tent it is not inconsistent with the provisions of  
9           this title, the securities laws, the rules and reg-  
10          ulations thereunder, the rules adopted by the  
11          Board, and other applicable Federal and State  
12          law.

13          (D) ABROGATION.—At any time within 60  
14          days of the date of filing of such a proposed  
15          rule change in accordance with the provisions of  
16          this paragraph, the Commission summarily may  
17          abrogate the change in the rules of the Board  
18          made thereby and require that the proposed  
19          rule change be refiled in accordance with the  
20          provisions of paragraph (2) of this subsection,  
21          if it appears to the Commission that such ac-  
22          tion is necessary or appropriate in the public in-  
23          terest, for the protection of investors, or other-  
24          wise in furtherance of the purposes of this title  
25          or the securities laws. Commission action pur-





1           suant to the preceding sentence shall not affect  
2           the validity or force of the rule change during  
3           the period it was in effect and shall not be re-  
4           viewable under section 25 of the Securities Ex-  
5           change Act of 1934 nor deemed to be "final  
6           agency action" for purposes of section 704 of  
7           title 5, United States Code.

8           (b) ~~POWER OF THE COMMISSION TO AMEND RULES~~  
9   OF THE BOARD.—The Commission, by rule or order, may  
10   abrogate, add to, and delete from (hereinafter collectively  
11   referred to as "amend") the rules of the Board as the  
12   Commission deems necessary or appropriate to assure the  
13   fair administration of the Board, to conform its rules to  
14   the requirements of this title, the securities laws, and the  
15   rules and regulations thereunder applicable to the Board,  
16   and otherwise in furtherance of the purposes of this title  
17   or the securities laws, in the following manner:

18           (1) NOTICE.—The Commission shall notify the  
19   Board and publish notice of the proposed rule-  
20   making in the Federal Register. The notice shall in-  
21   clude the text of the proposed amendment to the  
22   rules of the Board and a statement of the Commis-  
23   sion's reasons, including the pertinent facts, for  
24   commencing such proposed rulemaking.

1           (2) COMMENT.—The Commission, at its discre-  
2           tion, may give interested persons an opportunity for  
3           the oral presentation of data, views, and arguments,  
4           in addition to an opportunity to make written sub-  
5           missions. A transcript shall be kept of any oral pres-  
6           entation.

7           (3) TEXT OF RULE AND STATEMENT.—A rule  
8           adopted pursuant to this subsection shall incorporate  
9           the text of the amendment to the rules of the Board  
10          and a statement of the Commission's basis for and  
11          purpose in so amending such rules. The statement  
12          shall include an identification of any facts on which  
13          the Commission considers its determination to  
14          amend the rules of the Board to be based, including  
15          the reasons for the Commission's conclusions as to  
16          any of such facts that were disputed in the rule-  
17          making.

18          (4) ADDITIONAL PROVISIONS.—

19                (A) ADMINISTRATIVE PROCEDURE.—Ex-  
20                cept as provided in paragraphs (1) through (3)  
21                of this subsection, rulemaking under this sub-  
22                section shall be in accordance with the proce-  
23                dures specified in section 553 of title 5, United  
24                States Code, for rulemaking not on the record.

1 (B) PRESERVATION OF COMMISSION AU-  
2 THORITY.—Nothing in this subsection shall be  
3 construed to impair or limit the Commission's  
4 power to make, or to modify or alter the proce-  
5 dures the Commission may follow in making  
6 rules and regulations pursuant to any other au-  
7 thority under this title or the securities laws.

8 (C) RULE OF CONSTRUCTION.—Any amend-  
9 ment to the rules of the Board made by the Com-  
10 mission pursuant to this subsection shall be consid-  
11 ered for all purposes of this title and the securities  
12 laws to be part of the rules of the Board and shall  
13 not be considered to be a rule of the Commission.

14 (c) COMMISSION REVIEW OF DISCIPLINARY ACTION  
15 TAKEN BY THE BOARD.—

16 (1) NOTICE TO COMMISSION.—If the Board im-  
17 poses any final disciplinary or remedial sanction on  
18 any public accounting firm registered with the  
19 Board or on any person associated with a public ac-  
20 counting firm registered with the Board, the Board  
21 shall promptly file notice thereof with the Commis-  
22 sion. The notice shall be in such form and contain  
23 such information as the Commission, by rule, may  
24 prescribe as necessary or appropriate in furtherance  
25 of the purposes of this title and the securities laws.

1           (2) COMMISSION AUTHORITY TO REVIEW.—Any  
2       action with respect to which the Board is required  
3       by paragraph (1) of this subsection to file notice  
4       shall be subject to review by the Commission, on its  
5       own motion, or upon application by any person ag-  
6       grieved thereby filed within 30 days after the date  
7       such notice was filed with the Commission and re-  
8       ceived by such aggrieved person, or within such—  
9       longer period as the Commission may determine. Ap-  
10      plication to the Commission for review, or the insti-  
11      tution of review by the Commission on its own mo-  
12      tion, shall not operate as a stay of such action un-  
13      less the Commission otherwise orders, summarily or  
14      after notice and opportunity for hearing on the ques-  
15      tion of a stay (which hearing may consist solely of  
16      the submission of affidavits or presentation of oral  
17      arguments). The Commission shall establish for ap-  
18      propriate cases an expedited procedure for consider-  
19      ation and determination of the question of a stay.

20      (d) DISPOSITION OF REVIEW; CANCELLATION, RE-  
21      DUCTION, OR REMISSION OF SANCTION.—

22           (1) AUTHORITY TO AFFIRM, MODIFY, OR SET  
23      ASIDE.—In any proceeding to review a final discipli-  
24      nary or remedial sanction imposed by the Board on  
25      a public accounting firm registered with the Board

1 or a person associated with such a firm, after notice  
2 and opportunity for hearing (which hearing may  
3 consist solely of consideration of the record before  
4 the Board and opportunity for presentation of sup-  
5 porting reasons to affirm, modify, or set aside the  
6 sanction)—

7 (A) if the Commission finds that such firm  
8 or person associated with such a firm has en-  
9 gaged in such acts or practices, or has omitted  
10 such acts, as the Board has found him or her  
11 to have engaged in or omitted, that such acts  
12 or practices, or omissions to act, are in violation  
13 of such provisions of this title, the securities  
14 laws, the rules or regulations thereunder, the  
15 rules adopted by the Board, or professional  
16 standards as have been specified in the deter-  
17 ~~mination~~ of the Board, and that such provisions  
18 are and were applied in a manner consistent  
19 with the purposes of this title and the securities  
20 laws, then the Commission, by order, shall so  
21 declare and, as appropriate, affirm the sanction  
22 imposed by the Board, modify the sanction in  
23 accordance with paragraph (2) of this sub-  
24 section, or remand to the Board for further  
25 proceedings; or

1 (B) if the Commission does not make any  
2 such finding it shall, by order, set aside the  
3 sanction imposed by the Board and, if appro-  
4 priate, remand to the Board for further pro-  
5 ceedings.

6 (2) ALTERATION OF SANCTION.—If the Com-  
7 mission, having due regard for the public interest  
8 and the protection of investors, finds after a pro-  
9 ceeding in accordance with paragraph (1) of this  
10 subsection that a sanction imposed by the Board  
11 upon such firm or person associated is inadequate or  
12 inappropriate in light of the nature of the violation  
13 and the purposes of the securities laws, or is exces-  
14 sive or oppressive, the Commission may enhance,  
15 modify, cancel, reduce, or require the remission of  
16 such sanction.

17 (e) BOARD COMPLIANCE ~~WITH RULES AND REGULA-~~  
18 TIONS.—

19 (1) COMPLIANCE.—The Board shall comply  
20 with the provisions of this title, the securities laws,  
21 the rules and regulations thereunder, and its own  
22 rules and (subject to the provisions of paragraph (2)  
23 of this subsection and the rules thereunder) absent  
24 reasonable justification or excuse enforce compliance  
25 with such provisions and with professional standards



1 by public accounting firms registered with the Board  
2 and persons associated with such firms.

3 (2) COMMISSION RELIEF FROM COMPLIANCE.—

4 The Commission, by rule, consistent with the public  
5 interest, the protection of investors, and the other  
6 purposes of this title and the securities laws, may re-  
7 lieve the Board of any responsibility under this title  
8 to enforce compliance with any specified provision of  
9 this title, the securities laws, the rules or regulations  
10 thereunder, or professional standards by any public  
11 accounting firm registered with the Board or person  
12 associated with such a firm, or any class of such  
13 firms or persons associated with such firms if the  
14 Commission—

15 (A) finds that relieving the Board of such  
16 responsibility is necessary in the public interest  
17 and for the protection of investors; and—

18 (B) the Commission assumes the responsi-  
19 bility for enforcing such compliance.

20 (f) CENSURE OF THE BOARD; OTHER SANCTIONS.—

21 (1) COMMISSION AUTHORITY OVER BOARD.—

22 The Commission is authorized, by order, if in its  
23 opinion such action is necessary or appropriate in  
24 the public interest, for the protection of investors, or  
25 otherwise in furtherance of the purposes of this title

1 or the securities laws, to censure or impose limita-  
2 tions upon the activities, functions, and operations  
3 of the Board, if the Commission finds, on the record  
4 after notice and opportunity for a hearing, that the  
5 Board has violated or is unable to comply with any  
6 provision of this title, the securities laws, the rules  
7 or regulations thereunder, or its own rules or with-  
8 out reasonable justification or excuse has failed to  
9 enforce compliance with any such provision or any  
10 professional standard by a public accounting firm  
11 registered with the Board or a person associated  
12 with such a firm.

13 (2) COMMISSION AUTHORITY TO SANCTION  
14 MEMBERS.—The Commission is authorized, if in its  
15 opinion such activity is necessary or appropriate in  
16 the public interest, for the protection of investors, or  
17 otherwise in furtherance of the purposes of this title  
18 or the securities laws, to remove from office or cen-  
19 sure any member of the Board, if the Commission  
20 finds, on the record after notice and opportunity for  
21 a hearing, that such member has willfully violated  
22 any provision of this title, the securities laws, the  
23 rules or regulations thereunder, or the rules of the  
24 Board, willfully abused his or her authority, or with-  
25 out reasonable justification or excuse has failed to



1 enforce compliance with any such provision or any  
2 professional standard by any public accounting firm  
3 registered with the Board or any person associated  
4 with such a firm.

5 **SEC. 409. FOREIGN PUBLIC ACCOUNTING FIRMS.**

6 (a) **APPLICABILITY.**—Any foreign public accounting  
7 firm that furnishes an independent accountant's report  
8 with respect to any financial statement, report, or other  
9 document required to be filed with the Commission under  
10 the securities laws shall be subject to the provisions of this  
11 title in the same manner and to the same extent as a do-  
12 mestic public accounting firm.

13 (b) **EXEMPTIONS.**—Notwithstanding subsection (a),  
14 the Commission or Board may, by rule, regulation, or  
15 order and as it deems consistent with the public interest  
16 and the protection of investors, either unconditionally or  
17 upon specified terms and conditions—

18 (1) exempt any foreign public accounting firm,  
19 or any class of such firms, from 1 or more provi-  
20 sions of this title; or

21 (2) impose additional qualifications on any for-  
22 eign public accounting firm, or any class of such  
23 firms, to assure such firm's knowledge of profes-  
24 sional standards in the United States and that such



1        firm has adequate procedures in place to assure  
2        compliance with those professional standards.

3        (c) LIAISON.—The Board may, as it deems necessary,  
4        consult, liaise, and meet with accounting professionals and  
5        regulators in other countries.

6        **SEC. 410. TRANSITION.**

7        Any person previously associated with a public ac-  
8        counting firm and in the position of chief executive officer,  
9        chief financial officer, controller or principal accounting  
10       officer, or any equivalent positions of an issuer prior to  
11       the enactment of this Act, shall not impair the independ-  
12       ence of an accounting firm under section 406(a)(1). Until  
13       1 year from the date of the enactment of this Act, pro-  
14       viding those services set forth in section 406(a)(2) will not  
15       impair the independence of a public accounting firm, if  
16       performing those services did not otherwise previously im-  
17       pair the firm's independence ~~under preexisting~~ require-  
18       ments of the Commission or professional standards. Para-  
19       graphs (3) and (4) of section 406(a) shall not apply until  
20       5 years from the enactment of this Act. Section 406(a)(5)  
21       shall not apply to audits commenced prior to the date of  
22       the enactment of this Act.



1       **TITLE V—PRESERVATION OF**  
2                   **AUTHORITY**

3       **SEC. 501. SECURITIES AND EXCHANGE COMMISSION AU-**  
4                   **THORITY NOT IMPAIRED.**

5           Nothing in this Act shall be construed to impair or  
6 limit the Securities and Exchange Commission's authority  
7 over the accounting profession, accounting firms, or per-  
8 sons associated with such firms, or to set standards for  
9 accounting or auditing practices or auditor independence,  
10 derived from other provisions of the securities laws (as  
11 such term is defined in section 3(a)(47) of the Securities  
12 Exchange Act of 1934) or the rules or regulations there-  
13 under, or the Commission's ability to take, on its own ini-  
14 tiative, legal, administrative, or disciplinary action against  
15 any public accounting firm registered with the Board or  
16 any person associated with such a firm.



